DSHS HIPAA Privacy Rule Requirement Worksheet

1. Requirement Number: #8.12.6

2. Date: January 9, 2002 (Revised 9/26/02)

3. Originator: Marie Myerchin-Redifer
Title: DSHS Privacy Officer

4. Requirement Title: Effect of Prior Consents and Authorizations

5. CFR Citation: 45 CFR §164.532 – Administrative Requirements – Transition Provisions

6. Requirement: *(Provide a clear definition of the requirement as it applies to DSHS)*

Introduction:

In spite of any provision in Section 164.508 and Section 164.512, a covered entity may use or disclose PHI consistent with the sections for purposes other than research and for research based on an authorization or other express legal permission obtained from and individual permitting the use or disclosure of PHI, informed consent of the individual to participate in research, or a waiver of informed consent by an IRB.

Effect of a prior authorization for purposes other than research:
In spite of any provision in Section 164.508 a covered entity may continue to rely on authorizations or other legal permissions received prior to the compliance date of the rule, to use and disclose PHI, that it created or received prior to the compliance provided that the authorizations or permissions specifically permits such use or disclosure and there is no agreed to restriction according to Section 164.522(a).

Effect of prior permission for research:
In spite of any provision in Section 164.508 and Section 164.512, a covered entity may, to the extent allowed by one of the following permissions, use or disclose, for research, PHI that it created or received either before or after the applicable compliance date this section, provided there are no agreements to restrictions according to Section 164.522(a) and the covered entity has obtained, before the compliance date, either:

a) An authorization or other express legal permission from an individual to use or disclose PHI for the research;
b) The informed consent of the individual to participate in the research; or
c) A waiver, by an IRB of informed consent for the research, according to the federal CFR's on research (see specifics in the privacy rule), provided that covered entity must obtain an

authorization according to Section 164.508, if after the compliance date, informed consent is sought from an individual participating in the research.

Effect of prior contracts or other agreements with business associates:
In spite of any other provisions of this section, a covered entity, other than a small health plan, my disclose PHI to a business associate and may allow a business associate to create, receive, or use PHI on its behalf pursuant to a written contract or other written arrangement with the business associate that does not comply with Section 164.502(e) and Section 164.504(e), only for the time periods noted below.

Compliance specifics

1. **Qualification for compliance.** In spite of any other provisions, a covered entity, other than a small health plan, is considered to be in compliance with the documentation and contract requirements of the rule, if.

    a) Prior to October 15, 2002, the covered entity entered into and is operating according to a written contract or other written arrangement with a business associate to perform functions or activities to provide services that make the covered entity a business associate; and

    b) The contract or other arrangement is not renewed or modified from October 15, 2002 until the compliance date of April 14, 2003.

2. **Limited compliance period.** A prior contract or other arrangement that meets the qualification requirements noted in (1) of this section, is considered compliant until the earlier occurrence of the following:

    a) The date the contract or other arrangement is renewed or modified on or after the compliance date noted in the rule – April 14, 2003, or

    b) April 14, 2004.

3. **Covered Entity Responsibilities.** Nothing in Section 164.532 alters the requirement that a covered entity in terms of implementing the Compliance and Enforcement section of the rule, and the individual rights sections relating to access, amendment, accounting disclosures, and administrative requirements.

7. Reporter:
Administration/Division/Office/Program:

8. Date:

9. How do things happen now? *(Provide a detailed description of the current policy, process and/or practice relating to this requirement. If there is none indicate that. Include system functionality if it is a part of the process or practice. Identify whether the HIPAA privacy rule preempts state law.)*

10. Describe what needs to happen in the future: *(This section should include a detailed description of the new or changed policies, processes or practices required to be implemented to meet the HIPAA Privacy requirements. If possible, provide detailed examples of how the change(s) will effect various case situations. This section should also include descriptions of other new/changed items such as forms, reports, interfaces, system changes, etc.)*

11. How will this be implemented? *(Describe implementation plans for new or change policies, processes and/or practices, including information about conversion and piloting new/changed practices and processes.)*

12. If required changes depend upon a decision or decisions that have not been made, please specify:

Describe the decision(s) that must be made:

When do you anticipate that his decision will be made? ___/___/___